

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

MICHAEL TED LAMB,
TDCJ-CID # 790214
Plaintiff,

v.

RICHARD L. CRITES, et. Al.
Defendants.

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CIVIL ACTION NO. 2:11-cv-00027

**DEFENDANTS CRITES, GONZALES, JAMESON AND HASSETTE'S
RESPONSE TO PLAINTIFF'S MOTION TO REOPEN TIME TO FILE
MOTION TO COMPEL**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendants Richard Crites, Adam Gonzales, Jacquelyn Jameson and Lisa Hassette, by and through the Attorney General for the State of Texas, and file this Response to Plaintiff's Motion to Reopen Time to File Motion to Compel Discovery. In support thereof, Defendants respectfully offer the following:

I. STATEMENT OF THE CASE

Plaintiff Michael Lamb is an inmate incarcerated at the Texas Department of Criminal Justice-Correctional Institutions Divisions ("TDCJ-CID") McConnell Unit in Beeville, Texas. He brings this civil rights lawsuit pursuant to section 1983 alleging that Defendants retaliated against him for exercising his First Amendment right. *Docket Entry No.* ("D.E.")19. In response, Defendants filed an answer denying the

allegations and asserting their entitlement to immunities. D.E. 22 and 25.

A scheduling order was entered setting the following deadlines: Discovery due by 9/16/11; Motion for Summary Judgment due 10/18/11; Responsive brief deadline 11/17/2011. D.E. 27. On August 18, 2011, Plaintiff filed a motion for extension of time to file discovery, which was granted and the discovery deadline was extended to 10/17/2011. D.E. 42 and 47. The court also amended the scheduling order as follows: Responsive briefs due 12/16/2011, Motion for Summary Judgment due 11/17/11. D.E. 47. Next, Plaintiff filed interrogatories with the court, which the court struck it. D.E. 51. He also filed a motion to address qualified immunity and to suspend the time to file discovery, which Defendants filed a response in opposition. D.E. 53 and 54. The court denied the motion. D.E. 55. Defendants filed their motion for summary judgment on 10/18/11. Now, Plaintiff moves to reopen the time to file a motion to compel discovery. D.E. 61.

II. RESPONSE TO PLAINTIFF'S MOTION TO EXTEND

Plaintiff moves for thirty days to file a motion to compel discovery and requests protection from the alleged harassment at the prison. D.E. 61. He declares that he cannot respond to Defendants' motion for summary judgment before resolution of the discovery issue. *Id.* He also implores this court to grant the thirty day extension since it lacks jurisdiction to grant relief for the alleged harassment problem. *Id.* Defendants oppose Plaintiff's motion.

This is Plaintiff's second attempt to extend the discovery deadline and delay the proceedings in this case. Plaintiff's thirty-day extension would fall beyond the deadline for filing a motion for summary judgment; as such, it will delay the proceedings in this case by requiring an amended scheduling order to give Plaintiff additional time to complete discovery and file his motion for summary judgment as well as responses to dispositive motion. Moreover, an extension will prejudice Defendants by requiring them to expend additional time as well as resources to evaluate new evidence from Plaintiff and to redo their motion for summary judgment.

Next, Plaintiff has not demonstrated how the discovery will defeat Defendants' motion for summary judgment. After a party files a motion for summary judgment, "the nonmoving party must show how the additional discovery will defeat the summary judgment motion [in order to attain additional discovery]." *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994). This showing "may not simply rely on vague assertions that additional discovery will produce needed, but unspecified[,] facts.'" *Int'l Shortstop, Inc. v. Rally's Inc.*, 939 F.2d 1257, 1267 (5th Cir. 1991) (quoting *Sec. & Exch. Comm'n Spence & Green Chem. Co.*, 612 F.2d 896, 901 (5th Cir. 1980)). If the nonmoving party "fail[s] to show that discovery [i]s necessary to establish any issue of material fact that would preclude summary judgment," the district court's discovery ruling will not be disturbed. *King*, 31 F.3d at 346. In this case, Plaintiff does not indicate how his discovery will challenge Defendants' motion for summary judgment,

which focuses on the issue of qualified immunity. In fact, Plaintiff does not argue whether his discovery requests will undercut any specific argument and evidence in Defendants' motion for summary judgment. Accordingly, Defendants ask this court to deny Plaintiff's motion to reopen the time to file a motion to compel in the interest of proceeding in this case without undue delay or prejudice.

Respectfully submitted,

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/s/ **NADINE PHILLPOTTS**

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ATTORNEYS FOR DEFENDANTS

NOTICE OF ELECTRONIC FILING

I, NADINE PHILLPOTTS, Assistant Attorney General of Texas, do hereby certify that I have electronically submitted for filing, a true and correct copy of the above and foregoing in accordance with the Electronic Case Files system of the Southern District of Texas, on this the 14th day of November 2011.

/s/ NADINE PHILLPOTTS
Assistant Attorney General

CERTIFICATE OF SERVICE

I, NADINE PHILLPOTTS, Assistant Attorney General of Texas, do hereby certify that true and correct of the above and foregoing **Defendants Crites, Gonzales, Jameson, and Hassette's Response to Plaintiff's Motion to Reopen Time to File Motion To Compel Discovery** has been served by placing same in the United States mail on this the 14th day of November 2011, addressed to Plaintiff:

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Appearing Pro Se

/s/ NADINE PHILLPOTTS
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